



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 3

RIN 2900-AO22

Dependency and Indemnity Compensation (DIC) Benefits for Survivors of Former Prisoners of War Rated Totally Disabled at Time of Death

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its adjudication regulation regarding benefits for survivors of former prisoners of war who were rated totally disabled at the time of death. This amendment is necessary to conform the regulation to the authorizing statutory provision. The effect of this amendment is to liberalize the eligibility criteria for dependency and indemnity compensation (DIC) based on the death of a former prisoner of war whose service-connected disabilities had been continuously rated totally disabling for at least 1 year when he or she died.

DATES: Effective Date: This final rule is effective [Insert date of publication in the FEDERAL REGISTER].

Applicability Date: This final rule applies to an application for dependency and indemnity compensation that:

- Is received by VA on or after October 1, 2011;

- Was received by VA before October 1, 2011, but had not been decided by a VA regional office as of that date;
- Is appealed to the Board of Veterans' Appeals (Board) on or after October 1, 2011;
- Was appealed to the Board before October 1, 2011, but had not been decided by the Board as of that date; or
- Is pending before VA on or after October 1, 2011, because the Court of Appeals for Veterans Claims vacated a Board decision on the application and remanded it for readjudication.

FOR FURTHER INFORMATION CONTACT: Nancy A. Copeland, Consultant, Regulations Staff (211D), Compensation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 461-9685. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: DIC is a monthly benefit generally payable to the surviving spouse or child of a veteran who died in line of duty during active service or as a result of a service-connected disability. Under 38 U.S.C. 1318, however, DIC is payable to the surviving spouses or children of certain other deceased veterans. Specifically, until recently section 1318(b)(3) authorized payment to those survivors of a former prisoner of war who died after September 30, 1999, while entitled to compensation for a service-connected

disability continuously rated totally disabling for a period of not less than 1 year immediately preceding death.

Section 603(a) of the Veterans' Benefits Act of 2010, Public Law 111-275, 124 Stat. 2864, 2885, amended 38 U.S.C. 1318(b)(3) by removing the requirement that a former prisoner of war have died after September 30, 1999, for DIC to be payable under 38 U.S.C. 1318(b)(3). Accordingly, VA is removing the language "who died after September 30, 1999" from its implementing regulation.

In order to conform the adjudication regulation with the statutory provision, VA is amending 38 CFR 3.22(a)(2)(iii) by eliminating the language "who died after September 30, 1999." The statutory amendment was effective October 1, 2011. Pub. L. 111-275, sec. 603(b), 124 Stat. at 2885.

Administrative Procedure Act

The Secretary of Veterans Affairs finds, in accordance with 5 U.S.C. 553(b)(B) of the Administrative Procedure Act (APA), that this final rule merely incorporates statutory provisions. Therefore, the procedures of the APA regarding notice of proposed rulemaking and opportunities for public participation are unnecessary. Further, pursuant to section 553(d)(1), as a substantive rule which merely relieves a restriction, this final rule is exempt from the APA's 30-day delayed effective date requirement.

Paperwork Reduction Act

This document contains no provisions constituting a new collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This rule would not affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866 and 13563.

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a "significant regulatory action," which requires review by the Office of Management and Budget (OMB), as "any regulatory action that is likely to result

in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order."

The economic, interagency, budgetary, legal and policy implications of this rule have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866 because it is merely a restatement of the statute.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any year. This rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are 64.109, Veterans Compensation for Service-Connected Disability; 64.110; Veterans Dependency and Indemnity Compensation for Service-Connected Death.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on May 21, 2012, for publication.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Dated: July 5, 2012

Robert C. McFetridge,
Director of Regulation Policy and Management,
Office of General Counsel,
Department of Veterans Affairs.

For the reasons set out in the preamble, VA is amending 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity

Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Amend § 3.22, paragraph (a)(2)(iii) by removing “who died after September 30, 1999”.

[FR Doc. 2012-16812 Filed 07/09/2012 at 8:45 am; Publication Date: 07/10/2012]